

Determination of NEPA Adequacy (DNA)

**U.S. Department of the Interior
Bureau of Land Management
Medford District, Ashland Resource Area**

Maka Oyate Sundance Ceremony 2014

DOI-BLM-OR-M040-2014-005-DNA

A. Location of the Proposed Action:

The proposed authorized area encompasses approximately 580 acres north of Pilot Rock on BLM lands within the Cascade-Siskiyou National Monument (CSNM) (Figure 1).

The Public Land Survey Description is:

Township 40 South, Range 2 East, Section 25,
Township 40 South, Range 3 East, Section 30,
Willamette Meridian, Jackson County, Oregon.

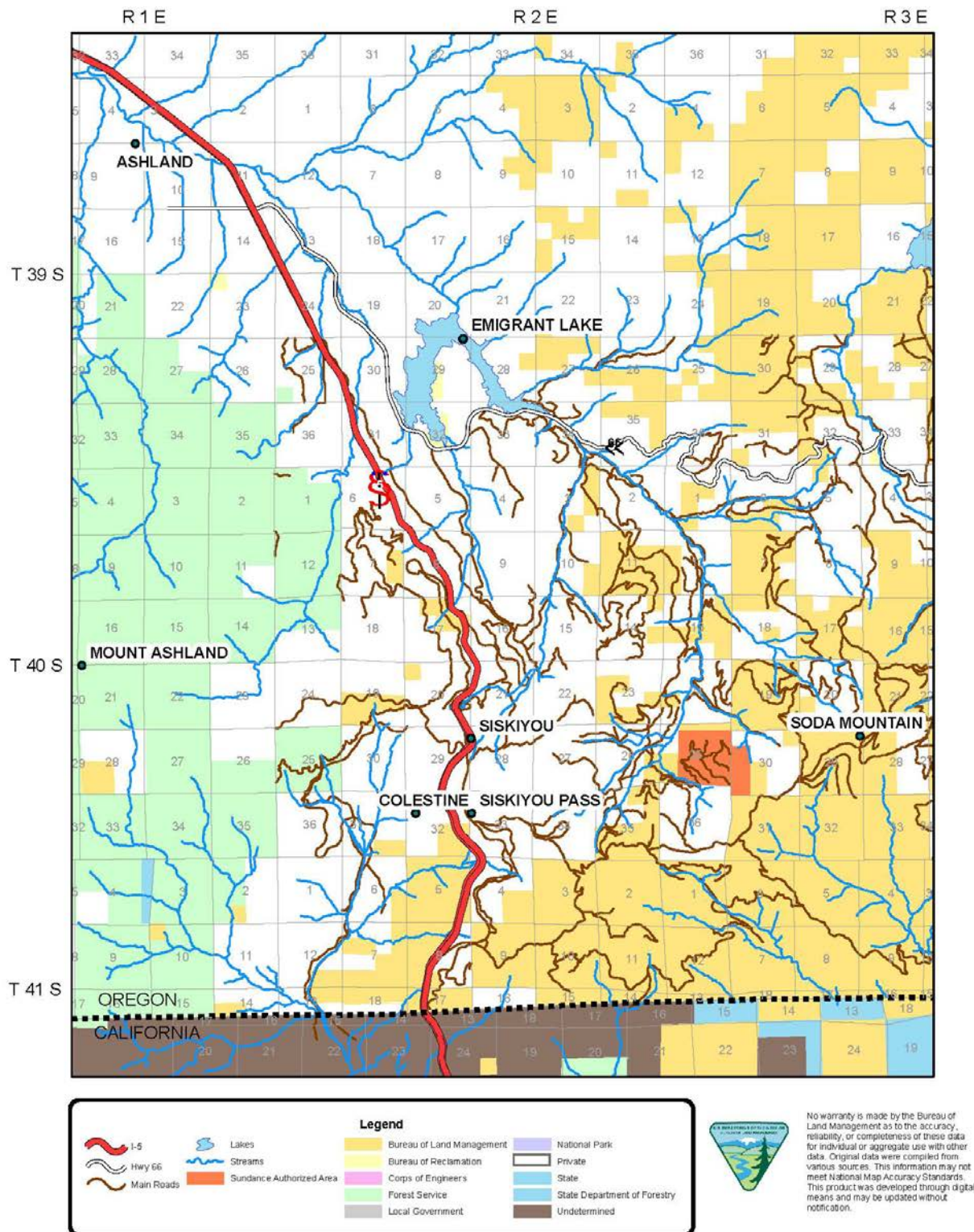
Description of the Proposed Action:

The Ashland Resource Area of the Medford District Bureau of Land Management (BLM) plans to re-issue a one-year authorization to the Maka Oyate Sundance Society for the purposes of conducting an annual Sundance Ceremony. The ceremony occurs during the summer over a two to three week period and is attended by 100-250 people, sometimes more. To facilitate the ceremony, the group builds sweat lodges and arbors which remain in place.

The authorization was initially issued in 2007 after an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) was conducted. The initial authorization expired in August 2009, but was renewed for three additional years in 2010 after completing a Determination of National Environmental Policy Act (NEPA) Adequacy (DNA). Another DNA was completed in 2013 to re-issue the authorization for the 2013 ceremony. The recent authorization expired in following ceremony in 2013. The authorization is eligible for renewal under Section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 USC 1761) and is subject to the terms and conditions in 43 CFR 2920.

The proposed action will incorporate all mandatory and special conditions included in the amended authorization letter dated May 2, 2008 which implemented revisions agreed upon by the BLM and the Maka Oyate Sundance Society to the July 23, 2007 letter of authorization (Attachment 1), except the BLM is waiving the requirement of a \$250.00 cash bond for this year's ceremony that had been a refundable deposit to ensure cleanup of the authorized area (Special Condition 7). The proposed action also incorporates the prohibition of motorized and mechanized vehicles or equipment within the Soda Mountain Wilderness on Roads 40-2E-25.2, 40-2E-25.3, and 39-2E-34 (Attachment 1) as identified on a map provided to the Maka Oyate Sundance Society in June 2009 (Attachment 2). This proposed action also modifies Special Condition 3 in Attachment 1 to allow 10 days for cleanup of the site following the ceremony rather than five shown on the previous authorization. This change was agreed upon by the BLM and the Maka Oyate Sundance Society following ceremony in 2012. These conditions are designed to protect monument and wilderness resources and adjacent landowners.

Figure 1. Maka Oyate Sundance Ceremony Site Vicinity Map
T. 40 S., R. 2 E., Sections 25 and T. 40 S., R. 3 E. Section 30.



B. Land Use Plan Conformance

Land Use Plan (LUP) Name: *Medford District Record of Decision and Resource Management Plan.*

Date Approved: June 1995

The proposed action conforms with the *Medford District Record of Decision and Resource Management Plan* as amended by the

- *Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage Protection Buffer, and other Mitigation Measure Standards and Guidelines* (USDA, USDI 2001), and
- incorporated the *Record of Decision and Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl* (NWFP) (USDA and USDI 1994).

The proposed action uses the species list from the 2001 ROD. At the time this EA was initiated, the Bureau of Land Management (BLM) was involved in legal proceedings on the Record of Decision to Remove the Survey and Manage Mitigation Measure Standards and Guidelines from Bureau of Land Management Resource Management Plans within the Range of the Northern Spotted Owl. Due to uncertainties surrounding these proceedings, this project utilized the last valid ROD, specifically the 2001 ROD and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines (not including subsequent Annual Species Reviews).

The Proposed Action is also consistent with BLM Manual 6840 (USDI 2008), the purpose of which is to provide policy and guidance for the conservation of BLM Special Status species and the ecosystems upon which they depend on BLM-administered lands. BLM Special Status species include those species listed or proposed for listing under the Endangered Species Act (ESA), as well as those designated as Bureau Sensitive by the State Director(s). The objectives of the BLM Special Status policy are: To conserve and/or recover ESA-listed species and the ecosystems on which they depend so that ESA protections are no longer needed for these species; and to initiate proactive conservation measures that reduces or eliminates threats to Bureau Sensitive species to minimize the likelihood of and need for listing of these species under the ESA (USDI 2008: section 0.02).

Land Use Plan (LUP) Name: *Cascade-Siskiyou National Monument Record of Decision and Resource Management Plan (ROD/RMP).*

Date Approved: August 2008

This proposal is in conformance with the Medford District's Record of Decision and Resource Management Plan (ROD/RMP) (USDI 1995). The 1995 RMP was the current Land Use Plan (LUP) in place when both the 2007 EA and Decision Record were completed. In 2008, the Cascade-Siskiyou National Monument (CSNM) Record of Decision and Resource Management Plan (ROD/RMP) was completed. The CSNM ROD/RMP provides overall direction for management of all resources on BLM-administered lands comprising the CSNM. The proposal meets the objectives and management direction for both plans. The LUP does not change the BLM's responsibility to comply with applicable laws and regulations, including the Federal Land Policy and Management Act (FLPMA), or any other federal law.

This proposal is also in compliance with the direction given for the management of public lands in the Medford District by the Oregon and California Lands Act of 1937 (O&C Act), Federal Land Policy and Management Act of 1976 (FLPMA), the Endangered Species Act of 1973 (ESA), the Clean Water Act of 1987 (CWA), Safe Drinking Water Act of 1974 (as amended 1986 and 1996) (SDWA), Clean Air Act of 1990, and the Archaeological Resources Protection Act of 1979 (ARPA).

C. Identify applicable National Environmental Policy Act (NEPA) documents and other related documents that cover the proposed action.

USDI Bureau of Land Management. May 2008. *Letter amending the July 23, 2007 letter of authorization for the Maka Oyate Sundance Society to conduct a large group Sundance Native American religious ceremony on lands managed by the Bureau of Land Management.* Medford District Office, Medford, Oregon.

USDI Bureau of Land Management. July 2007(a). *Maka Oyate Sundance Native American Religious Ceremony Environmental Assessment.* Medford District Office, Medford, Oregon.

USDI Bureau of Land Management. July 2007(b). *Maka Oyate Sundance Native American Religious Ceremony Decision Record and Finding of No Significant Impact (FONSI).* Medford District Office, Medford, Oregon.

USDI Bureau of Land Management. July 2007(c). *Letter of authorization for the Maka Oyate Sundance Society to conduct a large group Sundance Native American religious ceremony on lands managed by the Bureau of Land Management..* Medford District Office, Medford, Oregon.

USDI Bureau of Land Management. 2005. *Cascade-Siskiyou National Monument Proposed Resource Management Plan/Final Environmental Impact Statement.* Medford District Office, Medford, Oregon.

D. NEPA Adequacy Criteria

1. Is the current proposed action substantially the same action (or is a part of that action) as previously analyzed? Is the current proposed action within the same analysis area of the previously analyzed project? The *Maka Oyate Sundance EA*, listed above, analyzed the activities for conducting the Sundance Ceremony, with special conditions to protect monument resources in the Cascade-Siskiyou National Monument. The *Maka Oyate Decision Record* authorized the letter of authorization under Section 302 of the Federal Land Policy and Management Act (FLPMA) for a term of three years. In 2010, the three-year special use permit was renewed for this ceremony with the same project design features required under the above referenced EA, as amended by the letter dated May 2, 2008 and the map provided to the Maka Oyate Sundance Society in June 2009. Following ceremony in 2012, Special Condition 3 in Attachment 1 was modified to allow 10 days for cleanup of the site following the ceremony rather than five shown on the previous authorization. The current proposed action is to renew the land use permit for this ceremony for one additional year with the same project design features required under the previous authorization with the deletion of Special Condition 7m the requirement to deposit a cash bond to ensure cleanup of the site post-ceremony.

2. Is the range of alternatives analyzed in the existing NEPA documents appropriate with respect to the current proposed action, given current environmental concerns, interests, and resource values? The range of alternatives analyzed in the above Environmental Assessment document is appropriate with respect to the current proposed action. In addition to the two alternatives considered and analyzed in detail, a number of other alternatives were considered and included in the EA, but not analyzed in detail (USDI 2007(b): 1 and USDI 2007(a): 11).

3. Is the existing analysis valid in light of any new information or circumstances? This project is consistent with the suite of activities analyzed in the above referenced EA. The interdisciplinary team planning and overseeing the implementation of this site-specific project reviewed the anticipated effects of this project against those documented in the above-referenced EA and found the existing analysis to be valid for this proposed action.

Soda Mountain Wilderness Designation

The Omnibus Public Lands Management Act of 2009, Public Law No. 111-011, Section 1405, designated 24,100 acres of the Cascade-Siskiyou National Monument as wilderness. Designation of the Soda Mountain Wilderness alters how some of the Maka Oyate Sundance authorization area can be used. The wilderness overlaps the south eastern portion of the authorization area, specifically affecting motorized and mechanized use and parking on portions of the following roads: 40-2E-25.2, 40-2E-25.3, and 39-2E-34. A map showing the wilderness and the Maka Oyate Sundance ceremony authorization area and identifying where motorized and mechanized travel was no longer permitted within the wilderness boundary was given to the Maka Oyate Sundance Society in June 2009 (Attachment 2). Signs identifying the wilderness boundary were posted during field season 2009.

Getner's Fritillary

The Maka Oyate/Sundance area was surveyed in 2007 for special status plants and noxious weeds. An unknown *Fritillaria* species (it was vegetative, without flower) was found and protected by low impact restrictions (no digging, fires or soil disturbance). It is expected that these restrictions will continue. No other special status plants were found in the area. There will be no affect on special status plants including 2001 Survey and Manage species.

Treatment of Invasive Species since 2007

Canada thistle was found in 2007 and has been treated annually by spraying glyphosate. The infestation is down from several thousand plants to less than one hundred. Herbicide treatments will continue and there shall be no parking or entry of equipment into the area.

4. Do the methodology and analytical approach used in the existing NEPA documents continue to be appropriate for the current proposed action? The interdisciplinary team approach was used in evaluating the proposed action. The present methodology continues to be appropriate, because the action is the same.

5. Are the direct, indirect, and cumulative effects of the current proposed action similar to those identified in the existing NEPA documents? The interdisciplinary team planning and overseeing the implementation of this site-specific project reviewed the anticipated effects of this project against those

documented in the above referenced EA and the effects disclosed are the same as those identified and analyzed. No new information or circumstances would affect the predicted environmental impacts as stated in the above referenced EA.

Supporting statements from the above referenced EA:

The No Action Alternative would have no direct or indirect effects on fish populations or other aquatic resources within Porcupine Creek, Emigrant Creek, and Green Mountain level 7 drainages (HUC 7); Upper Emigrant Creek level 6 subwatershed (HUC 6); or Bear Creek level 5 watershed (HUC 5) (USDI 2007(a): 27).

Determining the [cumulative] effect of a disturbance to fish and aquatic populations is difficult because of the varied environmental factors which effect fish and aquatic populations. For example, non-point sources of sediment from natural and unnatural causes are usually indistinguishable. Additionally, salmonids distribution varies seasonally and temporally making it difficult to assess the exact effect of any sediment increases (USDI 2007(a): 27).

The cumulative effect of elevated stream temperature in Upper Emigrant Creek has resulted in stream temperatures above the ODEQ's summer standard of a maximum of 64° F. This alternative [proposed action] is not expected to cumulatively increase stream temperatures because no riparian vegetation would be removed along stream channels (USDI 2007(a): 30).

In addition to the above references, the cumulative effects section under Alternative 1 describes ongoing and future BLM projects in the area that may have an impact on fish and aquatic habitats.

The proposed action includes special conditions in the design of the authorization that will mitigate adverse impacts to the *Fritillaria* species. Only "low impact" activities will be permitted in the area where the vegetative *Fritillaria* species occur. No digging or fire-building would be allowed in this area. No other bureau special status species were detected during surveys. Therefore, there will be no affect on special status plant species (USDI 2007(a): 31).

In order to not contribute to the spread of this weed and its seeds, the proposed action includes special conditions in the authorization design prohibit parking or equipment in zones where the weeds are present (USDI 2007(a): 31).

No modification of habitat is proposed in either of the alternatives. The proposed action takes place after June 30th each year. The critical reproductive period for the northern spotted owl is from March 15 through June 30 each year. This activity is "Not Likely to Adversely Affect (NLAA)" the northern spotted owls breeding or dispersing in this area (USDI 2007(a): 31).

The proposed action is not expected to impact other special status species as it takes place outside of the reproductive period for all such species. As with the northern spotted owl, the great gray owl has completed nesting by this time of year and any fledged young are highly mobile and able to avoid disruptive activities. Mollusc species have completed their spring activity period and are aestivating in protected locations. The northwestern pond turtle and the Foothills yellow-legged frog are restricted to riparian areas or other water bodies in this locale and at this time of year, and should not be impacted by the proposed action (USDI 2007(a): 31).

The BLM Medford District's survey databases were reviewed for the presence of cultural resources. No cultural resource sites have previously been recorded in the database. Survey transects were run through the proposed authorized area ceremonial site and at Joe's Rock. No cultural resources or sites were found (USDI 2007(a): 32).

The proposed authorized area falls within the CSNM and the Maka Oyate Sundance Ceremony was within the scope of actions considered when evaluating the cumulative impacts on specific resources, local communities, and other users of the monument that result from implementing the resource management plan. Cumulative effects are discussed in the CSNM Proposed Resource Management Plan/Final Environmental Impact Statement (USDI 2005).

6. Are the public involvement and interagency review associated with existing NEPA document(s) adequately for the current proposed action? On March 7, 2007, scoping letters were sent to approximately 90 adjacent landowners, agencies, organizations and interested individuals announcing the proposed action to issue a three-year authorization to conduct an annual Sundance Ceremony within the Cascade-Siskiyou National Monument. A description of the activities expected and the exact location were included in the mailing, along with a request for public input regarding the proposed authorization (USDI 2007(a): 33).

Additionally, the following tribes were consulted:

- The Klamath Tribes
- The Quartz Valley Indian Reservation
- The Confederated Tribes of the Grand Ronde Community of Oregon
- The Confederated Tribes of the Siletz Indians

During the scoping process, six written responses were received. Issues related to the Scoping Proposal were identified by the interdisciplinary team after reviewing the input received. Issues that could not be resolved with the Proposed Action were carried forward for analysis as significant issues (USDI 2007(a): 5).

A list of the agencies, organizations, and tribes the EA was sent to can be found in Chapter 5 of the EA.

E. Interdisciplinary Analysis: This worksheet was distributed to the appropriate members of the Ashland Resource Area Interdisciplinary Team for review and input. Chapter 6 of the EA provides a list of individuals who participated in the formulation and analysis of the alternatives and subsequent preparation of the EA.

F. Mitigation Measures: Project Design Features (PDFs), discussed in Section A above, are included as part of the proposed action for the purpose of reducing or eliminating anticipated adverse environmental impacts.

Mandatory and special conditions, discussed in Section A above and included in Attachment 1, are required as part of the proposed action and are designed to protect monument resources and adjacent landowners.

CONCLUSION

Based on the review documented above, I conclude that this proposal conforms to the applicable land use plan and that the existing NEPA documentation fully covers the proposed action and constitutes BLM's compliance with the requirements of NEPA.



Kathy Minor
NEPA Coordinator
Cascade-Siskiyou National Monument

7-21-14

Date



John Gerritsma
Field Manager
Ashland Resource Area

7-21-14

Date

Mandatory Conditions

The authorization would be subject to the following mandatory conditions:

The authorized area will be within approximately 580 acres north of Pilot Rock in T. 40 S., R. 2 E., Section 25 and T. 40 S. R. 3 E., Section 30, W.M. on BLM lands within the Cascade-Siskiyou National Monument (Figure 1). The BLM understands the ceremonial use of the land is envisioned by the Maka Oyate Sundance Society for perpetuity. However, BLM regulations (43 CFR 2920.1-1(b)) state that the maximum timeframe for authorizing uses of public lands cannot exceed three years. The BLM intends to initiate an EA post-ceremony in 2014 to evaluate authorizing the Maka Oyate Sundance Society to use the area for future Sundance Ceremonies. The BLM provides this land-use authorization for the period beginning July 2014 and extending through the end of ceremony in August 2014. The Maka Oyate shall notify the BLM of the dates of the Sundance Ceremony at least two weeks prior to the start of ceremony.

The land-use authorization may be revoked at the discretion of the BLM, at any time upon notice as defined in this paragraph. We would not be revoking the designation as a “sacred area,” but may find it necessary to terminate the use of the authorized area should flagrant violations of terms and conditions occur. Flagrant violations would occur if the Maka Oyate Sundance Society purposefully or intentionally ignored or violated the terms and conditions of this authorization letter. The actions of individual ceremony participants would not trigger the termination of this authorization. Should an instance occur where an individual or a few individuals violate the terms and conditions of this authorization, the Maka Oyate Sundance Society security will remind the individual(s) of the agreements between the Maka Oyate and the BLM. Should the individual(s) still refuse to comply, the Maka Oyate Sundance Society shall notify the BLM as soon as practical of the violation(s). Should a catastrophic event, such as a wildfire, render the site ecologically fragile and not suitable for use, the BLM and the Maka Oyate Sundance Society agree to work together in establishing an on-site assessment of the area. It is further agreed that the BLM and Maka Oyate Sundance Society will mutually develop a plan which promotes recovery and protection of the ceremony site without undue compromise of the integrity and purpose of the ceremony.

This authorization is subject to all applicable provisions of the regulations (43 CFR 2920) which are made a part hereof and may not be assigned without prior approval of the BLM. The Maka Oyate Sundance Society shall not enclose roads or trails commonly in public use. Authorized representatives of the Department of the Interior, other Federal agencies, and State and local law officials shall at all times have the right to enter the premises on official business. Site visits shall be planned to the maximum extent possible to not disrupt, interrupt, or interfere with the Sundance Ceremony in order to remain respectful while ceremonies are taking place. The Maka Oyate shall pay the United States for any damage to its property resulting from the use (they are not, however, responsible for damage done by public use not associated with the ceremony). The Maka Oyate shall notify the BLM of address change immediately, and shall observe all Federal, State, and local laws and regulations applicable to the premises and to erection or maintenance of signs or advertising displays including the regulations for the protection of game birds and game animals, and must keep the premises in a neat, orderly, and sanitary condition. The Maka Oyate must take all reasonable precautions to prevent and suppress forest, brush, and grass fires and prevent pollution of waters on or in the vicinity of the lands. This authorization is subject to the provisions of Executive Order No. 11246 of September 24, 1965, as amended, which sets forth the Equal Opportunity clauses. A copy of this order may be obtained from the BLM.

Special Conditions

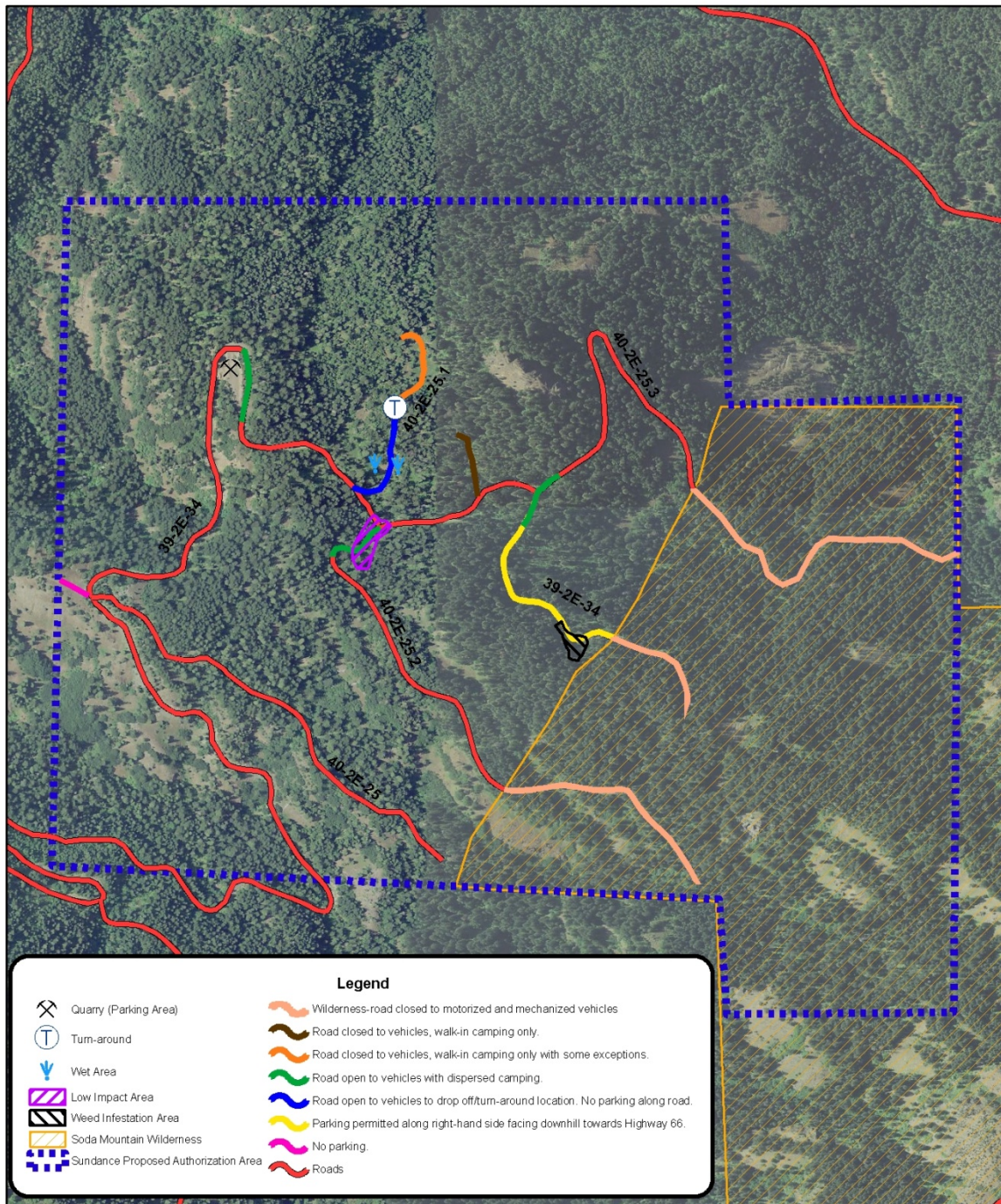
The following special conditions will be included in the authorization in addition to the mandatory conditions required (described above):

1. The Maka Oyate shall provide chemical toilets onsite during the entire period of the Sundance Ceremony.
2. The Maka Oyate shall obtain authorization from the Oregon Department of Forestry which allows for fire for ceremonial use. A copy of the authorization must be submitted to the Medford District Office of the BLM prior to the start of ceremony.
3. All refuse shall be cleaned up and removed from the site within 10 days of the ceremony ending date. Cleanup includes removal of benches, tables, structures at the campsites unrelated to the ceremony. Ceremonial structures and items may remain on the ceremonial grounds.
4. Firewood shall not be removed or cut from the authorized area or from within the Cascade-Siskiyou National Monument unless approved and designated by the BLM.
5. Local complaints will be resolved by the Maka Oyate Sundance Society.
6. A list of contact persons (with telephone numbers) shall be provided to the Medford District Office of the BLM prior to the start of ceremony.
7. ~~A \$250.00 cash bond shall be deposited at the Medford District Office of the BLM annually prior to the ceremony. Upon approval of cleanup of the authorized area, the cash bond will be refunded.~~ DELETED FOR 2014.
8. A monetary contribution of \$250 shall be paid to the BLM to comply with 43 CFR 2920.8. This contribution will be used to support and protect the authorized area.
9. A designated off-loading and turn-around location on Road 40-2E-25.1 ("lower road"), as identified in 2006, will be used to facilitate walk-in camping at the lower area. Only service vehicles for delivery of supplies and items for ceremonial uses at the altar and vehicles used by the elderly, handicapped, or spiritual leaders (medicine people) for camping, sleeping, and cooking will be permitted beyond the turn-around location (Figure 2).
10. Walk-in camping is permitted in the meadow above and directly east of the primary ceremonial site ("upper meadow"). Vehicles are not permitted in the upper meadow (Figure 2).
11. Dispersed camping is permitted along Road 40-2E-25.2 (Figure 2). The area provides limited group camping with vehicle access. Dispersed camping with vehicles is also permitted along Road 39-2E-34.0 near the quarry and in the flat area near the junction with Road 40-2E-25.3 (Figure 2). All vehicles shall be parked within 50 feet of the existing road.
12. Parking is permitted at the rock quarry on Road 39-2E-34.0. Space for approximately 60-80 vehicles is available at the rock quarry (Figure 2). Parking is also permitted along Road 39-2E-

34.0, southeast of its junction with Road 40-2E-25.3. Vehicles shall turn around at the end of Road 39-2E-34.0 and park along the right-hand side of the road facing downhill and back towards Highway 66 for safety and rapid egress from the site in the event of an emergency (Figure 2). Roads will not be blocked at any time with parked vehicles.

13. Grass cutting is required two weeks prior to start of the Maka Oyate Sundance Ceremony in all areas where vehicles will be parked.
14. Vehicle access is prohibited on the rock outcrop west of the junction of Roads 39-2E-34.0 and 40-2E-25 (Figure 2).
15. No new foot trails shall be created without prior BLM approval.
16. Vehicle and foot traffic (including mechanized or motorized off-highway vehicles) are not permitted in the two spring areas within the authorized area (Figure 2).
17. No new ceremonial pits will be built in riparian reserves.
18. To prevent the spread of Canada thistle, no parking would be permitted on the 200 ft. stretch adjacent to the area identified as “Weed Infestation Area” (Figure 2) along Road 39-2E-34.0. The stretch would be effectively marked on the ground by the BLM.
19. To mitigate impacts to the population of *Fritillaria*, no ground disturbing activities (including digging and campfires) would be permitted in the small meadow identified as “Low Impact Area” (Figure 2) along Road 40-2E-25.2.
20. Motorized and mechanized vehicles or equipment use and parking is not permitted within the Soda Mountain Wilderness, specifically affecting portions of the following roads: 40-2E-25.2, 40-2E-25.3, and 39-2E-34 identified as “Wilderness-road closed to motorized and mechanized vehicles” (Figure 2).

Figure 2. Alternative 2: Maka Oyate Sundance Ceremony Proposed Action.



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